

3 FAM 8320

NEPOTISM

(CT:PER-723; 03-11-2014)
(Office of Origin: HR/PC)

3 FAM 8321 OVERVIEW

(CT:PER-719; 01-08-2014)
(State Only)

This material applies equally to Foreign Service and Civil Service employees, interns/externs, detailees, and fellows of the U.S. Department of State and does not apply to overseas local hires (e.g. Locally Employed (LE) Staff - foreign national or U.S. citizen) hired pursuant to personal services agreements, personal services contracts, direct hire Foreign Service National appointments, part-time or intermittent temporary appointments, or Eligible Family Members hired under family member appointments (FMA/Temporary), which are addressed also in 3 FAH-1 H-8300.

3 FAM 8322 AUTHORITIES

(CT:PER-719; 01-08-2014)
(State Only)

Authorities are found under:

- 5 U.S.C. 3110, Employment of relatives; restrictions;
- 5 U.S.C. 2302(b)(7), Prohibited personnel practices;
- 18 U.S.C. 208, Acts affecting a personal financial interest;
- 5 CFR 2640, Interpretation, exemptions, waiver guidance concerning 18 U.S.C. 208; and
- 5 CFR 310, Employment of relatives.

3 FAM 8323 DEFINITIONS

(CT:PER-719; 01-08-2014)
(State Only)

a. For the purpose of these nepotism regulations:

- (1) A "relative" is a husband, wife, domestic partner as defined in 3 FAM 1600,

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father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister;

- (2) An "employee" is a Foreign Service or Civil Service employee of the U.S. Department of State, or a PSC employee, with the exception of overseas local hires, which are addressed in separate nepotism regulations set forth at 3 FAH-1 H-8300;
- (3) "General supervision" refers to a situation where an employee occupies a position at any level in the line of supervision over another employee;
- (4) "Office" refers to (a) a unit composed of at least 12 full-time or part-time permanent positions, or (b) a unit for which the Office Director reports directly to a Managing Director, a Deputy Assistant Secretary, an Ambassador-at-Large or the equivalent, an Assistant Secretary or the equivalent, an Undersecretary, a Deputy Secretary, or the Secretary;
- (5) "Office Director" refers to the head of an office;
- (6) "Personal Services Contract (PSC)" refers to a contract with an individual pursuant to express statutory authority that is characterized by the employer-employee relationship it creates between the U.S. Government and the contractor;
- (7) "PSC employee" refers to a person hired through a Personal Services Contract and not through direct U.S. Government hiring; and
- (8) "Public official" refers to an employee of the Department of State who has the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the Department of State.

3 FAM 8324 GENERAL

(CT:PER-719; 01-08-2014)
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An employee must scrupulously insulate himself or herself from acts benefiting, affecting, or giving the appearance of benefiting or affecting a relative's career or responsibilities, or which might reasonably be anticipated to benefit, affect, or give the appearance of benefitting or affecting a relative's career or responsibilities. An employee who fails to scrupulously insulate the exercise of his or her official authority from actions affecting, or giving the appearance of affecting, a relative's career advancement risks violation of 5 U.S.C. 3110 and the prohibited personnel practice provisions of 5 U.S.C. 2302(b)(7).

3 FAM 8325 EMERGENCY EXCEPTIONS

(CT:PER-719; 01-08-2014)
(State Only)

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 CFR 230.402(a)(1), a public official may employ relatives to meet those needs without regard to the restrictions in 5 U.S.C. 3110, and this part. Such appointments are temporary and may not exceed one month, but may be extended for a second month if the emergency need still exists, consistent with 5 CFR 310.202.

3 FAM 8326 PROHIBITED CONDITIONS

(CT:PER-723; 03-11-2014)
(State Only)

- a. An employee may not appoint, employ, promote, advance, assign, or advocate for appointment, employment, promotion, advancement, or assignment in or to a Department of State position, any individual who is a relative of that employee. An individual must not be appointed, employed, promoted, advanced, or assigned in or to a Department of State position if such appointment, employment, promotion, advancement, or assignment has been advocated by an employee who is a relative of the individual. In most instances, an individual appointed, employed, promoted, advanced, assigned or for whom such action is advocated in violation of this paragraph is not entitled to pay, and money may not be paid from the Department of Treasury as pay to such an individual.
- b. Neither an employee nor anyone over whom the employee exercises general supervision may participate in an employment selection or assignment process when a relative of that employee is likely to be a candidate for a position under consideration. The employment selection process includes, but may not be limited to, participation as selecting official or member of an employment committee, defining position requirements, establishment of qualification standards for the position, preparation or approval of position vacancy announcements, classification of the position, or setting, establishing, or recommending pay levels. The assignment process includes, but may not be limited to, involvement in the bidding process or any other determinations related to the position to which an employee is to be assigned. An employee's participation in an employment selection or assignment process, or the participation in the employment selection or assignment process of an individual under the general supervision of that employee, may disqualify the employee's relative from consideration for that position.
- c. No employee *may* exercise general supervision (as defined above) over a relative. Moreover, no employee *may*, with respect to a relative, sign or

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approve any official actions directly affecting a relative, including but not limited to appointment affidavits and personnel actions. An employee may not grant security clearances, certify time and attendance records, approve travel, or certify payments; initiate, participate in, or approve awards or disciplinary actions; prepare or approve job descriptions; establish work requirements; act as a certifying or contracting officer on documents which are signed by a relative; approve official documents (such as passports or visas) prepared by a relative; or otherwise have a working relationship which has or gives the appearance of having direction or control over the duties, assignment, promotion, or career of a relative.

- d. An employee and a relative, if both assigned or employed domestically, may not be placed in a position where the employee and relative work under the same Office Director.
- e. An employee and a relative may not be placed into positions wherein they jointly control government resources, property, or money, or establish government policy; or where an employee may reasonably be expected to audit, inspect, evaluate, promote, advance, or approve work assigned to a relative; and
- f. An employee and a relative may not be placed into positions that would require reconfiguration of lines of supervision and work processes in such a manner as would be reasonably expected to have an adverse effect on the mission of the government or other employees.

3 FAM 8327 ANTI-NEPOTISM REVIEW PROCEDURES

(CT:PER-719; 01-08-2014)
(State Only)

- a. Posts and bureaus must request and receive the approval of the Director General of the Foreign Service and Director of Human Resources (DGHR) before employing or assigning a relative in or to the same post or bureau if any of the following conditions apply:
 - (1) Because of the special responsibilities and authorities of these positions, the employee or prospective employee is (a) a relative of an ambassador, chief of mission, deputy chief of mission, principal officer, deputy principal officer, and is to be employed or assigned to the same post or, (b) a relative of any employee hired domestically at the level of a Deputy Assistant Secretary or higher and is to be employed or assigned: (i) domestically to a position with the Department in the same bureau or under the relative's general supervision or (ii) overseas to a post that reasonably is anticipated to come within the responsibility or authority of the relative based domestically;

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- (2) Any elements of the "Prohibited Conditions," listed in 3 FAH-1 H-8313 might appear to exist; and
 - (3) Substantial rearrangement or realignment of duties or responsibilities required in order to comply with the requirements of this regulation.
- b. The DGHR may approve or disapprove employment or assignment of relatives abroad and domestically, consistent with these regulations. The Director of the Bureau of Human Resources, Office of Career Development and Assignments (HR/CDA) is authorized to act on behalf of the DGHR with respect to the employment or assignment of Foreign Service relatives abroad and domestically, the Director of the Office of Civil Service Hiring and Resource Management (HR/CSHRM) with respect to Civil Service domestically. Posts and/or bureaus seeking the employment or assignment of relatives subject to these provisions must submit requests to approve the employment or assignment by decision memorandum to the DGHR or the relevant HR office, as appropriate. Approval or disapproval by the DGHR (or the relevant HR office) of a request for employment or assignment is subject to clearance by the Assistant Legal Adviser for Employment Law (L/EMP). Appeals of determinations by the relevant HR office may be addressed to the DGHR, who may sustain or amend any determination. Appeals should be transmitted by the appropriate bureau to M/DGHR.
- c. In reviewing requests for approval of Alternative Supervisory Arrangements (ASA), the DGHR should consider, in addition to the matters set forth elsewhere in these provisions, issues such as the potential impact of the proposed arrangement on (1) the morale and perceptions of other Department employees; (2) the willingness of Department employees serving under one or both of the employees in question to pursue actions or raise disputed matters that might bear upon or conflict with the work conducted by the other relative or those under that other relative's supervision; and (3) the Department's interest in ensuring that judgments offered by the employees in question to those higher up the supervisory chain are independent and that the decision-making process is not skewed by the existence of the relationship between employees.
- d. Requests by a bureau or post for approval to hire or assign a relative should include the following information, as appropriate:
- (1) **Action requested** (including brief overview of the proposed positions/assignments);
 - (2) **Concurrence** (including a brief statement of concurrence from post and/or bureau management);
 - (3) **Background** (including a description of the circumstances related to staffing the job(s) and any other considerations underlying the proposed employment or assignment);
 - (4) **Supervision** (including the proposed chain of command, contingencies for

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when supervisors and others up the chain of command are on leave or otherwise absent, and the proposed rating and reviewing structure for the employees in question);

- (5) **Handling of awards** (relatives must recuse themselves from all actions or activity involving performance-based awards to another relative or to an employee under the direct supervision of a relative);
 - (6) **Supervision by each relative of other employees** (including a description of the positions supervised (Foreign Service, Civil Service, or Locally Employed (LE) Staff) and any relevant information regarding plans for rating or reviewing those employees);
 - (7) **Resource allocation issues** (including information regarding internal controls and what, if any, role a relative might have in any financial or resource allocation matters involving the other relative's section or office; a description of who will approve travel and other expense vouchers, and decide upon any allocation of representational or other funds and resources for the relative's section or office; and information, if relevant, regarding management of ICASS, housing board issues, additional budget issues, and responsibilities regarding certification);
 - (8) **Official correspondence and cables** (including, if relevant, a description of how correspondence and cables handled by a relative's section will be handled);
 - (9) **Property management** (including, if relevant, information related to leasing, inventory, or property management issues);
 - (10) **Certification of time and attendance** (if relevant);
 - (11) **Cash accountability** (if relevant);
 - (12) **Management** (including, in the event one relative is to be reviewed by an officer at another post with regional responsibilities, a description of the plan for visits and continuing contacts with the regional supervisor or Washington officials);
 - (13) **Consular** (including information regarding internal control management and the integrity of the visa process);
 - (14) **Ethical considerations**;
 - (15) **Viability of the arrangement**; and
 - (16) **Agreement of all significant parties** (including signatures by all affected parties and relevant management officials to indicate willingness to abide by the terms and conditions of the proposed ASA, if approved).
- e. Determinations by the DGHR remain in effect only so long as the approved employment conditions and the individuals in the chain of command remain unchanged.
- f. The concurrence of a supervisor or higher management official to an ASA is not

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binding on his/her successor. Should a new supervisor or higher management official not wish to participate in or approve a pre-existing alternative supervisory arrangement, it will be revoked, and the Department may determine that one relative may have to choose between either electing to request LWOP or facing curtailment or reassignment.

3 FAM 8328 AND 8329 UNASSIGNED

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